3761.

SUPREME COURT OF THE UNITED STATES.

No. 205.

EUCLID WILLIAMSON, THOMAS F. ECKERT, & JOHN WILLIAMSON, PLAINTIFFS IN ERROR,

vs.

ALEX. B. BARRETT, ROBERT CLARK, NATHANIEL D. TERRY, HENRY LYNE, JAMES T. DONALDSON, WILLIAM BROWN, & JOHN B. SPROWLE.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF OHIO.

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GIDEON, Print.

Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the honorable the judges of the circuit court of the United States, for the district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said circuit court, before you, between Alexander B. Barrett, Robert Clark, Nathaniel D. Terry, Henry Lyne, James T. Donaldson, William Brown, and John B. Sprowle, plaintiffs, and Euclid Williamson, Thomas F. Eckert, and John Williamson, defendants, a manifest error hath happened, to the great damage of the said defendants, as, by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in the month of December next, in the said Supreme Court, then and there to be held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this thirty-first day of [SEAL.] October, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States of America the seventy-fifth.

Attest. WM. MINER, *Clerk*.

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

I, William Miner, clerk of the circuit court of the United States for the district of Ohio, do hereby certify, that a true copy of the within writ of error was lodged in my office on the thirty-first day of October, in the year of our Lord one thousand eight hundred and fifty.

In testimony whereof I have hereunto subscribed my name, and [SEAL.] affixed the seal of the said circuit court, at the city of Columbus, the day and year above written.

WM. MINER, *Clerk*.

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To Alexander B Barret, Robert Clark, Nathaniel D. Terry, Henry Lyne, James T. Donaldson, William Brown, and John B. Sprowle, greeting:

Whereas Euclid Williamson, Thomas F. Eckert, and John Williamson, have obtained the allowance of our writ of error to the circuit court of the United States for the district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an action of trespass on the case, wherein you, the said Alexander B. Barrett, Robert Clark, Nathaniel D. Terry, Henry Lyne, James T. Donaldson, William Brown, and John B. Sprowle, in that action lately recovered against the said Euclid Williamson, Thomas F. Eckert, and John Williamson, the sum of six thousand seven hundred fourteen dollars and nineteen cents damages, and 248 $\frac{16}{100}$ costs, as by the said record in the said circuit court remaining appears; in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Euclid Williamson, Thomas F. Eckert, and John Williamson, we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are therefore hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this thirty-first day of October, in the year [SEAL.] of our Lord one thousand eight hundred and fifty, and of the independence of the United States of America the seventy-fifth.

JOHN McLEAN.

We acknowledge service of this writ for Alexander B. Barrett, Robert Clark, Nathaniel D. Terry, Henry Lyne, James T. Donaldson, Wm. Brown, and John B. Sprowle, defendants in error.

TAFT & MALLON,
Attorneys for defendants in error.

Pleas began and held at the court-house, in the city of Columbus, on the third Tuesday in the month of October, that being the fifteenth day of that month, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States of America the seventy-fifth, before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of the circuit court of the United States, within and for the district of Ohio.

Among other proceedings had were the following, to wit:

ALEXANDER B. BARRETT, Robert Clark, Nathaniel D. Terry, Henry Lyne, James T. Donaldson, William Brown, and John B. Sprowle, plaintiffs,
vs.
EUCLID WILLIAMSON, Thomas F. Eckhert, and John Williamson, defendants.
} Trespass on the case.

Be it remembered, that heretofore, to wit, on the seventeenth day of February, in the year of our Lord one thousand eight hundred and forty-eight, came the said plaintiffs, by their attorneys, and sued out of the clerk's office of said court a certain writ of summons ad respondendum, against the said defendants, in the words and figures following, to wit:

"UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon Euclid Williamson, Thomas F. Eckhert, and John Williamson, citizens of, and residents in, the State of Ohio, if they be found in your bailiwick, to be and appear before the judges of the circuit court of the United States, for the district of Ohio aforesaid, at Columbus, on the third Monday in the month of July next, to answer Alexander B. Barrett, Robert Clark, Nathaniel D. Terry, Henry Lyne, James T. Donaldson, William Brown, and John B. Sprowle, citizens of and residents in the State of Kentucky, of a plea of trespass on the case, damages twenty thousand (20,000) dollars; and of this writ make legal service and due return on the first Monday of March next, and have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 17th day of February, 1848, and in the 72nd year of the independence of the United States of America.
[SEAL.]

Attest: WM. MINER, *Clerk.*"

On which said writ are the following endorsements, to wit:

"Summons in an action of trespass on the case against defendants, for wrongfully and negligently navigating their steamboat 'Paul Jones,' and thereby causing her to run against and sink the plaintiffs' steamboat, 'Major Barbour,' whereby the said steamboat 'Major Barbour,' became and was totally lost to the plaintiffs.

TAFT & MALLON,
Plaintiffs' attorneys."

"We, Taft and Mallon, acknowledge ourselves security for all costs for which the plaintiffs may be liable in this suit.

TAFT & MALLON."

And afterwards, to wit, at rules of said court, held in the clerk's office aforesaid, for the month of March, in the year last aforesaid, that being the time to which said writ was made returnable, came the marshal to

whom the same was in form aforesaid directed, and made return thereof into said clerk's office, with his proceedings endorsed thereon, in the words and figures following, to wit:

"Personally served on Euclid Williamson and Thomas F. Eckhert an attested copy of this writ, on the 18th day of February, A. D. 1848; John Williamson 'not found.'

D. A. ROBERTSON, *Marshal, O. D.*
By D. R. GOODIN, *Deputy.*"

And afterwards, to wit, at rules of said court, held as aforesaid for the month of July, in the year last aforesaid, came the said plaintiffs, by their attorneys, and filed in said clerk's office their declaration in this cause in the words and figures following, to wit:

"Circuit court of the United States, for the seventh circuit and district of Ohio. Of November term, in the year 1847.

DISTRICT OF OHIO, *ss.*

Alexander B. Barrett, Robert Clark, Nathaniel D. Terry, Henry Lyne, James T. Donaldson, William Brown, and John B. Sprowle, who are citizens of the State of Kentucky, by Taft and Mallon, their attorneys, complain of Euclid Williamson, Thomas F. Eckhert, and John Williamson, who are citizens of the State of Ohio, in a plea of trespass on the case.

For that whereas the plaintiffs, before and at the time of the committing of the grievances by the defendants hereinafter mentioned, were lawfully possessed of a certain steamboat, known as the 'Major Barbour,' of great value, to wit, of the value of $15,000, then lawfully being in the Ohio river, which was and is a navigable river and a public highway; and the defendants were also, then and there, possessed of a certain other steamboat, known as the 'Paul Jones,' in the river aforesaid, and then and there had the care, and direction, and management of the same: yet the defendants, not regarding their duty in that behalf, while the said steamboats respectively so were in the said river, to wit, on the third day of February, in the year 1848, at the district aforesaid, to so little and such bad care of their said steamboat 'Paul Jones,' and governed and navigated the same in so unskilful and improper a manner that the same, by and through the carelessness, unskilfulness, misdirection, mismanagement, and improper conduct of the defendants in that behalf, then and there, with great force and violence, ran foul of and struck against the said steamboat of the plaintiffs, and thereby, then and there, greatly broke, damaged, and injured the same, and caused the same then and there to fill with water and sink, whereby the said steamboat 'Major Barbour,' became and was lost and of no value to the plaintiffs, to the damage of said plaintiffs twenty thousand dollars; and therefore they bring their suit, &c.

TAFT & MALLON,
Attorneys for plaintiffs."

And thereupon, to wit, on the day and year last aforesaid, came the said defendants, by their attorney, and filed in said clerk's office their plea to the foregoing declaration of the plaintiffs, in the words and figures following, to wit:

Circuit court of the United States, for the district of Ohio.

EUCLID WILLIAMSON et als.
vs.
ALEXANDER B. BARRETT et als.

And the defendants, by T. D. Lincoln, their attorney, come and defend the wrong and injury, &c., and for a plea say, they are not guilty of the supposed grievances laid to their charge, in manner and form as the plaintiffs in declaring have alleged; and of this they put themselves upon the country, and the plaintiffs do the like.

T. D. LINCOLN,
Attorney for defendant."

And thereupon came the parties, by their attorneys, and filed in said clerk's office the following agreement, to wit:

"Circuit court of the United States, for the district of Ohio.

EUCLID WILLIAMSON et als.
ads.
ALEXANDER B. BARRETT et als.
} Trespass on the case.

It is agreed, by and between the parties to this suit, that the same shall be tried at the July term, 1848, unless good cause for continuance be shown; that the testimony may be taken by a magistrate or notary public, and according to the practice of the State courts of Ohio; that the testimony may be retained at Cincinnati for use of the attorneys, and by them opened without prejudice; provided all the testimony taken shall be filed in court before trial.

Cincinnati, April 1st, 1848.

T. D. LINCOLN,
Attorney for defendants.
TAFT & MALLON,
For plaintiffs."

And afterwards, to wit, on the second day of August, being at the July term of said court, in the year last aforesaid, "on motion of the plaintiffs, by their attorneys, this cause is continued at the plaintiffs' costs."

And afterwards, to wit, at the November term of said court, in the year last aforesaid, this cause was continued:

And afterwards, to wit, at the time appointed by law for holding the July term of said court, in the year of our Lord eighteen hundred and forty-nine, the marshal of said district, in conformity with the requirements of an order to that effect from the honorable John McLean, one of the judges of the said circuit court, adjourned said court to the 15th

day of October, then next ensuing; whereupon, by reason of such adjournment, this cause was continued: And afterwards, to wit, on the 15th day of October, being at the October term of said court, in the year last aforesaid, "came the parties, by their attorneys, and thereupon came a jury, to wit, H. S. Earhart, James Wilson, John E. Dye, Daniel Koutz, Edward Taylor, Daniel Chandler, William Armstrong, William Domigan, John Anderson, Philo H. Olmsted, Daniel Smith, and John Klapp, who were duly empannelled and sworn the truth to speak upon the issue joined between the parties; but the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning, at 9 o'clock."

And afterwards, to wit, on the sixteenth day of October, in the year and at the term of said court last mentioned, "came the parties by their attorneys, and also the jurors aforesaid, and the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning, at 9 o'clock."

And afterwards, to wit, on the seventeenth day of October, in the year and at the term of said court last mentioned, "came the parties aforesaid, by their attorneys, and also the jurors aforesaid, and the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning at 9 o'clock."

And afterwards, to wit, on the eighteenth day of October, in the year and at the term of said court last mentioned, "came the parties aforesaid, by their attorneys, and also the jurors aforesaid, and the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning, at 9 o'clock.

And afterwards, to wit, on the nineteenth day of October, in the year and at the term of said court last mentioned, came the parties aforesaid, by their attorneys, and also the jurors aforesaid, and the investigation of this cause being completed, the said jurors retired to consider of their verdict."

And afterwards, to wit, on the twentieth day of October, in the year and at the term of said court last mentioned, "came the parties aforesaid, by their attorneys, and also the jurors aforesaid; and thereupon the said jurors, upon their oaths, do say, that the said defendants are guilty in manner and form as the said plaintiffs have complained against them, and they assess the damages of the said plaintiffs, by reason of the premises, to six thousand seven hundred and fourteen dollars and twenty-nine cents; therefore, it is considered that the said plaintiffs recover of the said defendants the sum of six thousand seven hundred and fourteen dollars, and twenty-nine cents, their damages aforesaid, in form aforesaid assessed, and also their costs in this behalf expended, taxed to $——.

And afterwards, to wit, on the twenty-third day of October, in the year and at the term of said court last mentioned, "the defendants, by their attorneys, come and move the court to set aside the verdict, and grant a new trial in this cause, for the following reasons:

1st. Because the verdict is contrary to law and evidence;

2d. Because the court erred in its charge to the jury;

3d. Because the damages are excessive."

And afterwards, to wit, on the first day of November, in the year and at the term of said court last mentioned, "upon the trial of this cause, the said defendants, by their attorneys, tendered a bill of exceptions to the opinion of the court upon the points set forth in said bill of exceptions, and prayed that the same may be signed and sealed by the court, and made a part of the record in this case, which is accordingly done;" and is in the words and figures following, to wit:

"Seventh circuit court of the United States, Ohio district, Alexander B. Barrett, Robert Clark, Nathaniel D. Ferry, Henry Lyne, James T. Donaldson, William Brown, Jacob B. Sprawle, vs. Euclid Williamson, Thomas F. Eckhert, John Williamson. Be it remembered, that on the trial of this cause, evidence was given, showing that before and at the time of the collision mentioned in the pleadings in this cause, the plaintiffs' boat, the Major Barbour, was descending the Ohio river, and the defendant's boat, the Paul Jones, was ascending the same river, and heavily loaded, and the Major Barbour was light, the *the* Paul Jones being a much larger boat than the Major Barbour.

It was claimed by the plaintiffs, and testimony offered by them, tending to show that their boat was descending the middle of the river, and that the collision took place at or about the middle of the river.

It was claimed on the part of the defendants, and evidence was offered to show, that their boat was ascending near the Indiana shore, and that the plaintiffs' boat was also running near that shore, and that the collision took place near that shore. The plaintiffs also offered evidence tending to show that the Paul Jones, a short time before the collision, suddenly turned out from the Indiana shore, and ran across the river into the plaintiffs' boat; and the defendants offered evidence tending to show that the plaintiffs' boat, a short time before the collision, suddenly turned out from the Indiana shore, and crossed the bow of the Paul Jones.

Evidence was also given tending to show that the engine of the plaintiffs' boat was stopped, and the boat floated for some time previous to the collision; but it was admitted that she did not back her engines; and it was claimed by plaintiffs that she was not bound by the rules and usages of navigation to back her engines.

Evidence was also given tending to show that the Paul Jones, some time previous to the collision, stopped her engines, and then reversed her engines to back the boat, and had made from one to three revolutions back, and was actually backing at the time of collision.

And it was claimed by the plaintiffs, that their boat's engines were stopped, and the boat floating as soon as danger of collision was anticipated; and on the part of the defendants it was claimed the said Major Barbour's engines were not stopped sufficiently early, and that owing to that, and her not attempting to back her engines, that she contributed to the collision.

The plaintiffs and defendants also offered evidence of pilots on the

Ohio river, tending to show that boats navigating the Ohio river were bound to observe the following rules in passing each other: The boat descending, in case of apprehended difficulty or collision, were bound to stop her engines, and float at a suitable distance, so as to stop her headway; and the boat ascending should do the dodging or manœuvring. And some of the pilots also testified, that it was also the duty of both boats to back their engines, so as to keep the boats apart when danger was apprehended, and to do all they could to prevent a collision; but the greater part of them said the rule of the river required the descending boat to stop its engines and float, being at the place of collision, near the middle of the river. And the defendants' counsel asked the court to instruct the jury that, if by backing the Barbour's engine, in addition to stopping and floating, the collision could have been avoided, and the plaintiffs did not back her engines, and the plaintiffs could not recover, that the plaintiffs were bound to make use of all the means she had to prevent a collision. And thereupon the court charged the jury as follows:

That if the Major Barbour was in her proper track for a descending boat, as proved by several witnesses, near the middle of the river, and the Paul Jones in ascending the river was in her proper track, near the Indiana shore, and she turned out of her proper course, across the river, or quartering, in the language of some of the witnesses, so as to threaten a collision with the Major Barbour; and that as soon as this was discovered the Major Barbour stopped her engine, rang her bell, and floated down the stream, as the custom of the river required, leaving the ascending boat the choice of sides, and this was the law of the river, that on the near approach of the Major she was not required to back her engines, as that might bring her in contact with the other boat, but might presume that the Paul Jones did not intend to run into her, and that for an injury done to the Major Barbour under such circumstances, by the Paul Jones running into her, the plaintiff is entitled to recover such damages as appears from the evidence was done to the Major Barbour.

That if the Major Barbour turned out of her course, running near the Indiana shore, and this turning out of her course contributed to the collision, the plaintiff could not recover. That where both boats were in fault, the plaintiff could not recover. That in such case, the fault of the Major Barbour must be such as led to or contributed to the collision. That if the collision was the result of an unavoidable accident, the plaintiff could not recover.

That should the jury find for the plaintiff, they will give damages which shall remunerate the plaintiff for the damages incurred, necessarily, in raising the boat, and in repairing her; and also for the use of her during the time necessary to make the repairs and fit her for business. That the jury were not bound to give interest, as claimed by the plaintiff, but they would give such sum in damages as they shall deem just and equitable under the circumstances.

To which charge of the court, so far as it relates to charging the jury that the Major Barbour was not required to back her engine, but might presume that the Paul Jones did not intend to run into her; and also to so much of the charge as directs the jury that they might give damages for the use of the boat during the time necessary to make the repairs and fit her for business; and also to the refusal of the court to charge or instruct the jury as requested, the defendants, by their counsel, except, and pray this their bill of exceptions may be signed and sealed, which is done, and ordered to be made a part of the record.

JOHN McLEAN, [SEAL.]
H. H. LEAVITT. [SEAL.]

And afterwards, to wit, on the second day of November, being at the October term of said court, in the year of our Lord eighteen hundred and forty-nine, "the motion to set aside verdict and judgment, entered at the present term, came on to be heard this day, and was argued by counsel; whereupon the court do order that said judgment be, and the same is hereby, set aside; and it is further ordered, that said motion, so far as the same relates to setting aside said verdict, stand continued."

And afterwards, to wit, at the November term of said court, in the year last mentioned, this cause was continued.

And afterwards, to wit, at the time appointed by law for holding the July term of said court, in the year of our Lord eighteen hundred and fifty, the marshal of said district, in conformity with the requirements of an order to that effect from the honorable John McLean, one of the judges of the said circuit court, adjourned said court to the thirtieth day of September then next ensuing; whereupon, by reason of such adjournment, this cause was continued.

And afterwards, to wit, at the September term of said court, in the year last aforesaid, this cause was continued.

And now, at this day, to wit, on the twenty-fourth day of October, in the year and at the term of said court first herein mentioned, the motion for a new trial "came on to be heard this day, and was argued by counsel; on consideration whereof, it is ordered by the court, that the same be overruled; whereupon it is considered that the said plaintiff recover of the said defendants the said sum of six thousand seven hundred and fourteen dollars and nineteen cents, their damages by the jurors aforesaid assessed, and also their costs herein expended, taxed to $248 16. And thereupon came the defendants, by their attorneys, and moved the court for the allowance of a writ of error, which motion is granted on the said defendants entering into bonds to the plaintiffs in the sum of eight thousand dollars, with such security as shall be approved of by the clerk of this court."

THE UNITED STATES OF AMERICA,
District of Ohio.

I, William Minor, clerk of the circuit court of the United States, for the district of Ohio, do hereby certify, that the foregoing is a true copy

of the record of the proceedings had in a cause determined in said court, in which Alexander B. Barrett, Robert Clark, Nathaniel D. Terry, Henry Lyne, James T. Donaldson, William Brown, and John B. Sprawle, were plaintiffs, and Euclid Williamson, Thomas F. Eckhert, and John Williamson, were defendants, as the same appears in the records of said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at the city of Columbus, this first day of November, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States of America the seventy-fifth.

[SEAL.]

WM. MINOR, *Clerk*.

EUCLID WILLIAMSON et als.
vs.
ALEXANDER B. BARRETT et als.

Supreme Court of the United States.

Argument of errors.

And now come the plaintiffs in error, by T. D. Lincoln, their attorney, and says that in the record and proceedings aforesaid there is error to their prejudice, in this, to wit:

1st. That the circuit court erred in refusing to charge that the defendants' boat was not required to back her engines, as that might bring her into contact with the other boat, but might presume that the Paul Jones did not intend to run into her.

2d. That the court erred in charging the jury that they might give damages for the use of the boat during the time necessary to make the repairs and fit her for business.

3d. That the court erred in refusing to charge the jury as requested by the counsel for the defendants below.

4th. That the court erred in giving the charge it did give, which is set forth in the bill of exceptions.

5th. That the court erred in overruling the motion for a new trial.

6th. That the court erred in entering judgment for the plaintiffs below.

7th. That there are other errors manifest upon the said record and proceedings to the injury of the plaintiffs in error.

T. D. LINCOLN,
Attorney for the plaintiffs in error.